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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,333	07/15/2002	Larry V. Lapanashvili	088790-000100US	7823

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EXAMINER

JASTRZAB, JEFFREY R

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 01/21/2004

7

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/069,333

Applicant(s)

LAPANASHVILI ET AL.

Examiner

Jeffrey R. Jastrzab

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

## DETAILED ACTION

### *Information Disclosure Statement*

The information disclosure statement filed on 20 Feb 02 does not fully comply with the requirements of 37 CFR 1.98 because: there is no list of references (form 1449) attached. Since the submission appears to be *bona fide*, applicant is given **ONE (1) MONTH** from the date of this notice to supply the above mentioned omissions or corrections in the information disclosure statement. **NO EXTENSION OF THIS TIME LIMIT MAY BE GRANTED UNDER EITHER 37 CFR 1.136(a) OR (b).** Failure to timely comply with this notice will result in the above mentioned information disclosure statement being placed in the application file with the noncomplying information **not** being considered. See 37 CFR 1.97(i).

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10, 13-15, 17, 20-23, 28, 29, 34, 36, 37, 41, and 42 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Krikorian, US-4451417. Note that cardioresonance (claim 7) is inherently effected by the Krikorian device.

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Claims 8, 9 and 18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by WO 99/36028.

Claims 8, 30, 31 and 32 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by EP 0547733.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Claims 11, 12, 16, 19, 24-27 and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krikorian. The Krikorian patent discloses the invention substantially as claimed but for random stimulation, wireless transmission of pulse

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parameters, safety means, a seat configuration, and gating means as claimed. As to stimulation, the concept of random stimulation is notorious in the stimulation arts and merely changing the Krikorian stimulation to optimize efficacy would have amounted to an obvious design consideration. As to the wireless concept, the wireless transmission for relaying body parameters is an accepted and well known functional equivalent for hardwired communications in the diagnostics arts. Such a modification lacks patentable moment. As to Claims 24-27, circuit modifications to effect user adjustability and storage of stimulation or sensed parameters would have amounted to obvious design considerations to the routineer in the art. As to the safety means, Krikorian fails to specifically address safety, even though safety limits are typically built-in to such devices. In any event, the incorporation of safety means into Krikorian amounts to a known concept. The Examiner hereby takes official notice that safety means as claimed are well known design considerations in the art, and not patentable modifications.

Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krikorian in view of Platzker, US-5313942. As to the seat structure claimed, although the Krikorian device uses a belt for the sensors, the use of diagnostic sensors in seat structures, e.g. wheelchairs, is well known for use with handicapped as taught by Platzker. As such merely incorporating the Krikorian device into a chair would have been obvious to effect use by the disabled.


Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0547733. To merely make the integral elements for the EP 0547733 separate would

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have amounted to an obvious design consideration, further wireless transmission is notorious in the art, to incorporate such a capability into the EP 0547733 device would have been obvious to effect portability.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (703) 308-2097. The examiner can normally be reached on Monday through Wednesday and Friday from 5:30am to 2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angie Sykes, can be reached on (703) 308-5181. The fax phone number for this Art Unit is (703) 872-9306.



Jeffrey R. Jastrzab  
Primary Examiner  
Group 3762

January 12, 2004